

Article other than cheese or cheese products. Any article that is a dairy product, but not a cheese or cheese product.

CBP. United States Customs and Border Protection, U.S. Department of Homeland Security.

Cheese or cheese products. Articles in headings 0406, 1901.90.34, and 1901.90.36 of the Harmonized Tariff Schedule.

Commercial entry. Any entry except those made by or for the account of the United States Government or for a foreign government, for the personal use of the importer or for sampling, taking orders, research, or the testing of equipment.

Country. Country of origin as determined in accordance with CBP rules and regulations, except that “EC”, and “Other countries” shall each be treated as a country.

DAIRIES. The “Dairy Accelerated Importer Retrieval and Information Exchange System”. The web-based user interface system which persons must utilize to apply for and manage licenses, and through which the Licensing Authority will communicate all program notices.

Dairy products. Articles in headings 0401 through 0406, margarine cheese listed under headings 1901.90.34 and 1901.90.36, ice cream listed under heading 2105, and casein listed under heading 3501 of the Harmonized Tariff Schedule.

Department. The United States Department of Agriculture.

EC. Those countries listed in Additional U.S. Note 2 to Chapter 4 of the Harmonized Tariff Schedule.

Enter or Entry. To make or making entry for consumption, or withdrawal from warehouse for consumption in accordance with CBP regulations and procedures.

Harmonized Tariff Schedule or HTS. The Harmonized Tariff Schedule of the United States.

Licensee. A person to whom a license has been issued under this subpart.

Licensing Authority. Any officer or employee of the U.S. Department of Agriculture designated to act in this position by the Director of the Division charged with managing the Dairy Tariff-Rate Quota Import Licensing System.

Other countries. Countries not listed by name as having separate tariff-rate quota allocations for an article.

Person. An individual, firm, corporation, partnership, association, trust, estate or other legal entity.

Process or processing. Any additional preparation of a dairy product, such as melting, grating, shredding, cutting and wrapping, or blending with any additional ingredient.

Quota year. The 12-month period beginning on January 1 of a given year.

Tariff-rate quota amount or TRQ amount. The amount of an article subject to the applicable in-quota rate of duty established under a tariff-rate quota.

United States. The customs territory of the United States, which is limited to the 50 states, the District of Columbia, and Puerto Rico.

[80 FR 44254, July 27, 2015]

§ 6.22 Requirement for a license.

A person who seeks to enter, or cause to be entered an article as a commercial entry, shall obtain a license, in accordance with this subpart.

[80 FR 44254, July 27, 2015]

§ 6.23 Eligibility to apply for a license.

(a) *In general.* To apply for any license, a person shall have:

(1) A business office, and be doing business, in the United States, and

(2) An agent in the United States for service of process, and

(3) An email address to be used for correspondence regarding licensing activities and reports.

The licensee is responsible to continuously maintain a valid email address in DAIRIES for use in communicating with the Licensing Authority.

(b) *Eligibility for 2016 and subsequent quota years.* (1) Historical licenses (Appendix 1). A person issued a historical license for an article for the current quota year may apply for a historical license (Appendix 1) for the next quota year for the same article from the same country, if such person was, during the 12-month period ending August 31 prior to the quota year, either:

(i) Where the article is cheese or cheese product,

§ 6.23

(A) The owner of and importer of record for at least three separate commercial entries of cheese or cheese products totaling not less than 57,000 kilograms net weight, each of the three entries not less than 2,000 kilograms net weight;

(B) The owner of and importer of record for at least eight separate commercial entries of cheese or cheese products, from at least eight separate shipments, totaling not less than 19,000 kilograms net weight, each of the eight entries not less than 450 kilograms net weight, with a minimum of two entries in each of at least three quarters during that period; or

(C) The owner or operator of a plant listed in Section II or listed in Section I as a processor of cheese of the most current issue of "Dairy Plants Surveyed and Approved for USDA Grading Service" and had processed or packaged at least 450,000 kilograms of cheese or cheese products in its own plant in the United States; or

(ii) Where the article is not cheese or cheese product,

(A) The owner of and importer of record for at least three separate commercial entries of dairy products totaling not less than 57,000 kilograms net weight, each of the three entries not less than 2,000 kilograms net weight;

(B) The owner of and importer of record for at least eight separate commercial entries of dairy products, from at least eight separate shipments, totaling not less than 19,000 kilograms net weight, each of the eight entries not less than 450 kilograms net weight, with a minimum of two entries in each of at least three quarters during that period;

(C) The owner or operator of a plant listed in the most current issue of "Dairy Plants Surveyed and Approved for USDA Grading Service" and had manufactured, processed or packaged at least 450,000 kilograms of dairy products in its own plant in the United States; or

(D) The exporter of dairy products in the quantities and number of shipments required under (A) or (B) above.

(2) Nonhistorical licenses for cheese or cheese products (Appendix 2). A person may annually apply for a nonhistorical license for cheese or cheese

7 CFR Subtitle A (1-1-21 Edition)

products (Appendix 2) if such person meets the requirements of paragraph (b)(1)(i) of this section.

(3) Nonhistorical licenses for articles other than cheese or cheese products (Appendix 2). A person may annually apply for a nonhistorical license for articles other than cheese or cheese products (Appendix 2) if such person meets the requirements of paragraph (b)(1)(ii) of this section.

(4) Designated license (Appendix 3). A designated license may be issued to a person who has applied for a license, has met the requirements of paragraph (b)(1)(i) of this section, and is designated by the government of a country for such license according to § 6.25(d).

(c) *Exceptions.* (1) A licensee that fails in a quota year to enter at least 85 percent of the amount of an article permitted under a license shall not be eligible to receive a license for the same article from the same country for the next quota year. For the purpose of this paragraph, the amount of an article permitted under the license will exclude any amounts surrendered pursuant to § 6.26(a), but will include any additional allocations received pursuant to § 6.26(b).

(2) Paragraph (c)(1) of this section will not apply where the licensee demonstrates to the satisfaction of the Licensing Authority that the failure resulted from breach by a carrier of its contract of carriage, breach by a supplier of its contract to supply the article, act of God or force majeure.

(3) Paragraph (c)(1) of this section may not apply in the case of historical or nonhistorical licenses, where the licensee demonstrates to the satisfaction of the Licensing Authority that the country specified on the license maintains or permits an export monopoly to control the dairy articles concerned and the licensee petitions the Licensing Authority to waive this requirement. The licensee shall submit evidence that the country maintains an export monopoly as defined in this paragraph. For the purposes of this paragraph "export monopoly" means a privilege vested in one or more persons consisting of the exclusive right to carry on the exportation of any article

of dairy products from a country to the United States.

(4) The Licensing Authority will not issue a nonhistorical license (Appendix 2) for an article from a country during a quota year to an applicant who is affiliated with another applicant to whom the Licensing Authority is issuing a non-historical license for the same article from the same country for that quota year. Further, the Licensing Authority will not issue a non-historical license for butter to an applicant who is affiliated with another applicant to whom the Licensing Authority is issuing a historical butter license of 57,000 kilograms or greater. For the purpose of this paragraph, an applicant will be deemed affiliated with another applicant if:

(i) The applicant is the spouse, brother, sister, parent, child or grandchild of such other applicant;

(ii) The applicant is the spouse, brother, sister, parent, child or grandchild of an individual who owns or controls such other applicant;

(iii) The applicant is owned or controlled by the spouse, brother, sister, parent, child or grandchild of an individual who owns or controls such other applicant.

(iv) Both applicants are 5 percent or more owned or directly or indirectly controlled, by the same person;

(v) The applicant, or a person who owns or controls the applicant, benefits from a trust that controls such other applicant.

(5) The Licensing Authority will not issue a nonhistorical license (Appendix 2) for an article from a country during a quota year to an applicant who is associated with another applicant to whom the Licensing Authority is issuing a nonhistorical license for the same article from the same country for that quota year. Further, the Licensing Authority will not issue a non-historical license for butter to an applicant who is associated with another applicant to whom the Licensing Authority is issuing a historical butter license for 57,000 kilograms or greater. For the purpose of this paragraph, an applicant will be deemed associated with another applicant if:

(i) The applicant is an employee of, or is controlled by an employee of, such other applicant;

(ii) The applicant manages or is managed by such other applicant, or economically benefits, directly or indirectly, from the use of the license issued to such other applicant.

(6) The Licensing Authority will not issue a nonhistorical license for an article from a country during a quota year, for which the applicant receives a designated license.

[80 FR 44254, July 27, 2015]

§ 6.24 Application for a license.

(a) Application for license shall be made on electronic forms designated for the purpose by the Licensing Authority. All parts of the application shall be completed. The application shall be transmitted no earlier than September 1 and no later than midnight October 15 of the year preceding that for which license application is made. The Licensing Authority will not accept incomplete applications.

(b)(1) Where the applicant seeks to establish eligibility on the basis of imports, applications shall include identification of entries sufficient to establish the applicant as the importer of record of entries required under § 6.23, during the 12-month period ending August 31 prior to the quota year for which license is being sought. For qualifying licensed entries, verification will be only processed through DAIRIES and cross checked with entries in the CBP system. For qualifying unlicensed entries, the applicant will submit an electronic copy (*e.g.* scanned PDF) of CBP Form 7501 to the Licensing Authority.

(2) Where the applicant seeks to establish eligibility on the basis of exports, applications shall include:

(i) Census Form 7525 or a copy of the electronic submission of such form, and

(ii) The commercial invoice or bill of sale for the quantities and number of export shipments required under § 6.23, during the 12-month period ending August 31 prior to the quota year for which license is being sought.

(c) An applicant requesting more than one nonhistorical license must rank order these requests by the applicable Additional U.S. Note number.